



April 13, 1999

Ms. Joan Carol Bates, Medicaid Attorney  
Office of General Counsel  
Texas Department of Health  
110 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-0994

Dear Ms. Bates:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123413.

The Department of Health (the "department") received a request for reports submitted to the department by PCA (Travis and Bexar Counties), HMO Blue (Travis and Bexar Counties), Foundation Health (Travis County) and Community First (Bexar County). You indicate that you have no responsive records submitted by Foundation Health. As regards the remaining organizations, you indicate that you will provide access to most of the requested information to the requestor, however you contend that release of the Health Education Plans, Cultural Competency Plans, and Quality Improvement Plans of these health care organizations may affect the interests of these third parties. While the department takes no position vis a vis this information, you raise section 552.110 of the Government Code for our consideration. You have submitted a representative sample of the responsive information.<sup>1</sup>

We note that the request for information is dated, November 18, 1998 and that the department's request for opinion was received by our office on, January 22, 1998. Thus, the department failed to request an open records decision from this office within the ten day statutory period as required under Government Code section 552.301. This failure to timely request a decision results in the legal presumption that the requested information is open to the public; only the demonstration of a compelling interest can overcome this presumption. *See Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.305 of the Government Code, this office informed the affected third parties, PCA Health Plans, Rio Grand HMO (Blue Cross Blue Shield of Texas), and Community First Health Plans, of the request for information and provided them the opportunity to claim such exceptions to disclosure as any may contend apply to the requested information, together with argument in support of any raised exception. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions in certain circumstances). These notifications stated that if the party did not respond within 14 days of receipt of the notice, this office will assume that the party has no privacy or property interest in the requested information. The notices were sent on February 1, 1999. As of the date of this opinion, none of the parties responded to this notice. As no party has raised an exception to the Open Records Act or established why any exception to disclosure applies to the requested information, we conclude that no compelling reason has been demonstrated for withholding the information and it must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 123413

encl. Submitted documents

cc: Ms. Kathy Mitchell  
Consumer Union  
1300 Guadalupe, Suite 100  
Austin, Texas 78701  
(w/o enclosures)